



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 7, 1996

Mr. Richard D. Monroe  
Deputy General Counsel  
Texas Department of Transportation  
Dewitt C. Greer State Highway Bldg.  
125 East 11th Street  
Austin, Texas 78701-2483

OR96-0901

Dear Mr. Monroe:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 27878.

The Texas Department of Transportation (the "department") received a request from an attorney on behalf of his client for information about traffic signal lights at the intersection of Bentsen Palm Drive and Expressway 83. The intersection was the site of an automobile accident in which the attorney's client was injured. The attorney has sent letters to the department alleging that the department was responsible for the accident because it did not properly maintain the lights and seeking damages for his client's injuries. You claim that all of the requested information is excepted from disclosure because it relates to reasonably anticipated litigation pursuant to section 552.103(a) of the Government Code.

To show the applicability of section 552.103(a), a governmental body must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.-Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4.

Under Open Records Decision No. 638 (1996), a governmental body may establish that litigation is reasonably anticipated by showing that (1) it has received a claim letter from an allegedly injured party or his attorney and (2) the governmental body states that the letter complies with the notice of claim provisions of the Texas Tort Claims Act ("TTCA"). You have submitted to this office a letter from an attorney representing the injured party. Because your request for a decision from this office was made prior to the

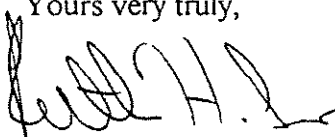
issuance of Open Records Decision No. 638 (1996), this office will assume that you are representing that the notice letter you received satisfies the requirements of the TTCA. If this assumption is correct you may withhold the requested documents that relate to this anticipated litigation. Therefore, the department has met its burden of showing that litigation is reasonably anticipated and the information at issue may be withheld pursuant to section 552.103(a), since the submitted documents are related to anticipated litigation.

If, however, this assumption is incorrect and you are not representing that the notice letter complies with the TTCA, then you have not met your burden of showing that litigation is reasonably anticipated for purposes of section 552.103(a). See Open Records Decision No. 638 (1996). We note that if in the future you assert that section 552.103(a) is applicable on the basis of a notice of claim letter, you should *affirmatively* represent to this office that the letter complies with the requirements of the TTCA.

We note that the applicability of section 552.103(a) also ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982) at 3. We also note that since the section 552.103(a) exception is discretionary with the governmental entity asserting the exception, Open Records Decision No. 542 (1990) at 4, the department could choose to release the information at this time. Gov't Code § 552.007.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the fact presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy  
Assistant Attorney General  
Open Records Division

RHS/SAB/ch

Ref.: ID# 27878

Enclosures: Open Records Decision No. 638 (1996)  
Submitted documents

cc: Mr. David Lee McGee  
Law Offices of David Lee McGee  
1303 First City Tower  
McAllen, Texas 78501  
(w/ enclosures--Open Records Decision No. 638 (1996))